



Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov/public/do/PRAMain) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the **Addresses** section on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210, or ebsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Current Actions

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any

changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Bank Collective Investment Funds, Prohibited Transaction Class Exemption 1991-38.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0082

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 7,719

Responses: 7,719

Estimated Total Burden Hours: 1,287

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description:

Prohibited Transaction Class Exemption (PTE) 91-38 provides an exemption from the restrictions of sections 406(a), 406(b)(2), and 407(a) of ERISA for certain transactions between a bank collective investment fund in which an employee benefit plan has invested assets and persons who are parties in interest to the employee benefit plan, as long as the plan's total participation in the collective investment fund does not exceed 10 percent of the total assets in the collective investment fund. In addition, the bank managing the common investment fund must not itself be a party in interest to the participating plan, the terms of the transaction must be at least as favorable to the collective investment fund as those available in an arm's length transaction with an unrelated party, and the bank must maintain records of the transactions for six years and make the records available for inspection to specified interested persons (including the Department and the Internal Revenue Service).

The information collections relates to recordkeeping and disclosure on request to the Department and other interested persons. The information collection requirements allow the Department, the Internal Revenue Service, and other interested persons to verify that the bank collective investment fund has complied with the conditions of the exemption. These conditions are necessary, as required under section 408(a) of ERISA, to ensure that respondents rely on the exemption only in the circumstances protective of plan participants and beneficiaries. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0082. The current approval is scheduled to expire on April 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 1990-1; Insurance Company Pooled Separate Accounts.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0083

Affected Public: Businesses or other for-profits.

Respondents: 102

Responses: 1,020

Estimated Total Burden Hours: 170

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description:

Prohibited Transaction Class Exemption (PTE) 90-1 provides an exemption from the restrictions of section 406, in part, for certain transactions between insurance company pooled separate accounts and parties in interest to plans that invest assets in the pooled separate accounts. PTE 90-1 provides a general exemption for any transaction between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest (or any acquisition or holding by the pooled separate account of employer securities or employer real estate), provided that the party in interest is not the insurance company (or an

affiliate of the insurance company) and that the amount of the plan's investment in the separate account does not exceed certain specified percentages (or that the separate account is a specialized account with a policy of investing substantially all of its assets in short-term obligations).

PTE 90-1 also provides specific, additional relief for the following types of transactions with a party in interest: (1) furnishing goods to an insurance company pooled separate account, (2) leasing of real property of the pooled separate account, (3) transactions involving persons who are parties in interest to a plan merely because they are service providers or provide nondiscretionary services to the plan; (4) the insurance company's provision of real property management services in connection with real property investments of the pooled separate account, and (5) furnishing of services, facilities and goods by a place of public accommodation owned by the separate account.

In addition to other specified conditions, the insurance company intending to rely on the general exemption or any of the specific exemptions must maintain records of the transactions to which the exemption applies for a period of six years and make the records available on request to specified interested persons (including plan fiduciaries, the Department, and the Internal Revenue Service). This information collection requirement is considered necessary in order to ensure that the exemption meets the standards of section 408(a) of ERISA. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0083. The current approval is scheduled to expire on April 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Foreign Currency Transactions, Prohibited Transaction Class Exemption 1994-20.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0085

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 243

Responses: 1,215

Estimated Total Burden Hours: 203

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description:

PTE 94-20 permits banks, broker-dealers, and their affiliates that are parties in interest to a plan to engage in foreign currency transactions with the plan, provided the transaction is directed by a plan fiduciary independent of the bank, broker-dealer, and their affiliates and that certain other conditions are satisfied.

To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires, among other things, that a bank, broker-dealer, and their affiliates wishing to rely on the exemption (1) maintain written policies and procedures applicable to trading in foreign currencies with an employee benefit plan; (2) provide a written confirmation statement of each foreign currency transaction to the independent plan fiduciary directing the transaction for the plan; and (3) maintain records of the transactions for a period of six years and make them available upon request to specified interested persons, including plan fiduciaries, participants and beneficiaries, the Internal Revenue Service, and the Department. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0085. The current approval is scheduled to expire on April 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Settlement Agreements Between a Plan and a Party in Interest.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0091

Affected Public: Businesses or other for-profits.

Respondents: 4

Responses: 1,080

Estimated Total Burden Hours: 23

Estimated Total Burden Cost (Operating and Maintenance): \$275

Description:

This information collection request (ICR) relates to two prohibited transaction class exemptions (PTEs) that the Department has granted, both of which involve settlement agreements.

Granted on October 7, 1994, PTE 94-71 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, a transaction or activity that is authorized, prior to the execution of the transaction or activity, by a settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department. The following information collections are among the conditions for the exemption: (1) Written Notice. A party engaging in a settlement agreement arising out of a Department investigation must provide written notice to the affected participants and beneficiaries of the plan. The notice must contain an objective description of the transaction or activity, the approximate date on which the transaction will occur, the address of the regional or district office of the Department that negotiated the settlement agreement, and a statement informing participants and beneficiaries of their right to forward their comments to such office. (2) Pre-Approval. A copy of the notice and a description of the method by which it will be distributed must be approved in advance by the regional or district office of the Department which negotiated the settlement.

Granted on December 31, 2003, and later amended on June 15, 2010, PTE 2003-39 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, transactions arising out of the settlement of litigation that involve the release of claims against parties in interest in exchange for payment by or on behalf of the party in interest, provided that certain conditions are met, such as the requirement of an independent fiduciary who has no relationship to any parties in the litigation to authorize the settlement. The other conditions include the

following information collections: (1) Written Agreement. The terms of the settlement must be specifically described in a written agreement or consent decree. (2) Acknowledgement by Fiduciary. The fiduciary acting on behalf of the plan must acknowledge in writing that s/he is a fiduciary with respect to the settlement of the litigation.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0091. The current approval is scheduled to expire on April 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Definition of Plan Assets—Participant Contributions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0100

Affected Public: Businesses or other for-profits.

Respondents: 1

Responses: 251

Estimated Total Burden Hours: 8

Estimated Total Burden Cost (Operating and Maintenance): \$1,626

Description:

The Department's regulation at 29 CFR 2510.3-102 states that monies that a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan become "plan assets" for purposes of Title I of ERISA and the related prohibited transaction provisions of the Internal Revenue Code (the Code) as of the earliest date on which such monies can be reasonably segregated from the employer's general assets. With respect to employee pension benefit plans, the regulation further sets a maximum time limit for such contributions: the 15th business day following the end of the month in which the participant contribution amounts are received or withheld by the employer. Under ERISA, "plan assets" cannot be held by the employer as part of its general assets, but must be contributed to the employee benefit plan to

which they belong and, with few exceptions, held in trust. With respect to small plans (those with less than 100 participants), a safe harbor period exists under which participant contributions will be deemed to comply with the law if those amounts are deposited with the plan within seven business days of receipt or withholding.

The regulation includes a procedure through which an employer receiving or withholding participant contributions for an employee pension benefit plan may obtain a 10-business-day extension of the 15-day maximum time period if certain requirements, including information collection requirements, are met. The regulation requires, among other things, that the employer provide written notice to plan participants, within five business days after the end of the extension period and the employer's transfer of the contributions to the plan, which the employer elected to take the extension for that month. The notice must explain why the employer could not transfer the participant contributions within the maximum time period, state that the participant contributions in question have in fact been transmitted to the plan, and provide the date on which this was done. The employer must also provide a copy of the participant notice to the Secretary, along with a certification that the notice was distributed to participants and that the other requirements under the extension procedure were met, within five business days after the end of the extension period.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0100. The current approval is scheduled to expire on April 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Collective Investment Funds Conversion Transactions, Prohibited Transaction Class Exemption 1997-41.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0104

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 50

Responses: 105

Estimated Total Burden Hours: 1,760

Estimated Total Burden Cost (Operating and Maintenance): \$508,282

Description:

Prohibited Transaction Class Exemption 97-41 permits an employee benefit plan to purchase shares of a registered open-end investment company (mutual fund) in exchange for plan assets transferred from a collective investment fund (CIF) maintained by a bank or plan adviser, even though the bank or plan adviser is the investment adviser for the mutual fund and also serves as a fiduciary for the plan, provided that the purchase and transfer is in connection with a complete withdrawal of the plan's investment in the CIF and certain other conditions are met.

Among other conditions, the exemption requires the bank or plan adviser to provide an independent fiduciary of the plan with advance written notice of the proposed transfer and full written disclosure of information concerning the mutual fund, including the current prospectus; disclosure of the investment advisory and other fees the plan will be charged or pay to the bank or any unrelated third party, including the nature and extent of any differential between the rates of the fees; the reasons why the bank or plan adviser considers the in-kind transfers appropriate for the plan; and a statement of whether there are any limitations applicable to the bank with respect to which plan assets may be invested in the mutual fund and, if so, the nature of such limitations; and the identity of securities that will have to be valued for the transfer. The independent fiduciary must give prior written approval of the transfer (and written approval of any electronic transmission of subsequent confirmations from the bank or plan adviser); and the bank or adviser must send written (or electronic, if approved) confirmation of the transfer. Subsequent to a transfer, the bank or plan adviser must provide the plan with updated prospectuses at least annually for mutual funds in which the plan remains invested; the bank or

plan adviser must also provide, upon the independent fiduciary's request, a report or statement of all fees paid by the mutual fund to the bank or plan adviser, which may be in the form of the most recent financial report.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0104. The current approval is scheduled to expire on April 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (PTE 2002-12).

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0115

Affected Public: Businesses or other for-profits.

Respondents: 60

Responses: 840

Estimated Total Burden Hours: 855

Estimated Total Burden Cost (Operating and Maintenance): \$1,146

Description:

PTE 2002-12 permits private-sector pension plans and the Federal Thrift Savings Plan to invest plan assets in certain types of investment funds that participate in passive or model-driven “cross-trading” (purchase and sale of securities) programs pursuant to objective criteria specified in the exemption. Cross-trades occur whenever a manager causes the purchase and sale of a particular security to be made directly between two or more investment funds under his/her management. If one or both of the funds contain invested assets of a pension plan, the cross-trade could constitute a prohibited transaction, in the absence of the exemption.

In order to grant a class exemption under section 408(a) of ERISA, section 8477(c)(3) of FERSA, and section 4975(c)(2) of the Code, the Department must determine that the exemption

is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. In order to protect the participants and beneficiaries of plans that invest in cross-traded Funds, the Department included specific disclosure and recordkeeping requirements as conditions to the exemption. These information collections are designed to safeguard plan assets by requiring that managers relying on the exemption both periodically provide information on the cross-trading programs to independent plan fiduciaries and keep detailed records about cross-trades conducted in reliance on the exemption. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0115. The current approval is scheduled to expire on April 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0118

Affected Public: Businesses or other for-profits.

Respondents: 1,621

Responses: 207,209

Estimated Total Burden Hours: 7,295

Estimated Total Burden Cost (Operating and Maintenance): \$551,111

Description:

This information collection arises from two related actions: the Voluntary Fiduciary Correction Program (the VFC Program or the Program) and Prohibited Transaction Class Exemption (PTE) 2002-51 (the VFC Exemption or the Exemption). The Department adopted the Program and the Exemption in order to encourage members of the public to voluntarily correct transactions that violate (or are suspected of violating) the fiduciary or prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA). The information

collection provisions of the Program and the Exemption include third-party disclosures, recordkeeping, and disclosures to the Federal government, which enable the Department to oversee the appropriate use of the Program and the Exemption. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0118. The current approval is scheduled to expire on April 30, 2022.

Title: Acquisition and Sale of Trust Real Estate Investment Trust Shares by Individual Account Plans Sponsored by Trust Real Estate Investment Trusts.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0124

Affected Public: Businesses or other for-profits.

Respondents: 69

Responses: 144,900

Estimated Total Burden Hours: 7,457

Estimated Total Burden Cost (Operating and Maintenance): \$459,333

Description:

Prohibited Transaction Exemption 2004-07 permits an individual account pension plan sponsored by a real estate investment trust (REIT) that is organized as a business trust under State law (Trust REIT), or by its affiliates, to purchase, hold and sell publicly traded shares of beneficial interest in the Trust REIT. The relief also covers contributions in-kind of REIT shares. Such purchases, holdings, and sales would otherwise be prohibited under sections 406 of ERISA and 4975 of the Code.

The class exemption requires, among other conditions, that the Trust REIT (or its agent) provide the person who has authority to direct acquisition or sale of REIT shares with the most recent prospectus, quarterly report, and annual report concerning the Trust REIT immediately before an initial investment in the Trust REIT. The person with such authority may be, under the

terms of the plan, either an independent fiduciary or a participant exercising investment rights pertaining to his or her individual account under the plan. Updated versions of the reports must be provided to the directing person as subsequently published. The exemption further requires the plan to maintain records concerning investments in a Trust REIT, subject to appropriate confidentiality procedures, for a period of six years and make them available to interested persons including the Department and participants and beneficiaries. The confidentiality procedures must be designed to protect against the possibility that an employer may exert undue influence on participants regarding share-related transactions, and the participants and beneficiaries of the plan must be provided with a statement describing the confidentiality procedures in place and the fiduciary responsible for monitoring these procedures. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0124. The current approval is scheduled to expire on April 30, 2022.

Title: Abandoned Individual Account Plan Termination, 404a-3.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0127

Affected Public: Businesses or other for-profits.

Respondents: 25,105

Responses: 1,014,463

Estimated Total Burden Hours: 37,680

Estimated Total Burden Cost (Operating and Maintenance): \$562,225

Description:

This information collections relates to the three regulations and exemption relate to terminating or abandoned plans and/or to distribution and rollover of distributed benefits for which no participant investment election has been made. The abandoned plan initiative includes the following actions, which impose the following information collections.

(1) The Qualified Termination Administrator (QTA) Regulation (29 CR 2578.1) creates an orderly and efficient process by which a financial institution that holds the assets of a plan that is deemed to have been abandoned may undertake to terminate the plan and distribute its assets to participants and beneficiaries holding accounts under the plan, with protections and approval of the Department under the standards of the regulation. The regulation requires the QTA to provide certain notices to the Department, to participants and beneficiaries, and to the plan sponsor (or service providers to the plan, if necessary), and to keep certain records pertaining to the termination.

(2) The Abandoned Plan Terminal Report Regulation (29 CFR 2520.103-11) regulation provides an alternative, simplified method for a QTA to satisfy the annual report requirement otherwise applicable to a terminating plan by filing a special simplified terminal report with the Department after terminating an abandoned plan and distributing its accounts to participants and beneficiaries.

(3) The Terminated Plan Distribution Regulation (29 CFR 2550.404a-3) regulation establishes a safe harbor method by which fiduciaries who are terminating individual account pension plans (whether abandoned or not) may select an investment vehicle to receive account balances distributed from the terminated plan when the participant has failed to provide investment instructions. The regulation requires the fiduciaries to provide advance notice to participants and beneficiaries of how such distributions will be invested, if no other investment instructions are provided.

(4) The Abandoned Plan Class Exemption (PTE 2006-06) permits a QTA that terminates an abandoned plan under the QTA regulation to receive payment for its services from the abandoned plan and to distribute the account balance of a participant who has failed to provide investment direction into an individual retirement account (IRA) maintained by the QTA or an affiliate. One of the conditions of the exemption requires that the QTA keep records of the distributions for a period of six years and make such records available on request to interested

persons (including the Department and participants and beneficiaries). If a QTA wishes to be paid out of plan assets for services provided prior to becoming a QTA, the exemption requires the QTA to enter into a written agreement with a plan fiduciary or the plan sponsor prior to receiving payment and a copy of the agreement to be provided to the Department.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0127. The current approval is scheduled to expire on April 30, 2022.

Title: Genetic Information Nondiscrimination Act of 2008 Research Exception Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0136

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 24

Responses: 24

Estimated Total Burden Hours: 6

Estimated Total Burden Cost (Operating and Maintenance): \$83

Description:

The Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110-233, was enacted on May 21, 2008. Title I of GINA amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), the Internal Revenue Code of 1986 (the Code), and the Social Security Act (SSA) to prohibit discrimination in health coverage based on genetic information. Sections 101 through 103 of Title I of GINA prevent employment-based group health plans and health insurance issuers in the group and individual markets from discriminating based on genetic information and from collecting such information. The interim final regulations, which are codified at 29 CFR 2590.702A, only interpret Sections 101 through 103 of Title I of GINA.

GINA and the interim final regulations (29 CFR 2590.702A(c)(5)) provide an exception to the limitations on requesting or requiring genetic testing that allows a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test if all of the following conditions of the research exception are satisfied.

(1) The request must be made pursuant to research that complies with 45 CFR Part 46 (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of 45 CFR 46.116(a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the participant is otherwise entitled, and the participant may discontinue participation at anytime without penalty or loss of benefits to which the participant is entitled (the Participant Disclosure). The interim final regulations provide that when the Participant Disclosure is received by participants when their informed consent is sought, no additional disclosures are required for purposes of the GINA research exception.

(2) The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits, premium, or contribution amounts.

(3) None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.

(4) The plan or issuer must complete a copy of the “*Notice of Research Exception under the Genetic Information Nondiscrimination Act*” (the Notice) and provide it to the address specified in its instructions.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0136. The current approval is scheduled to expire on April 30, 2022.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.
- Evaluate the effectiveness of the additional demographic questions.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 29th day of October, 2021.

Ali Khawar,

Acting Assistant Secretary,

Employee Benefits Security Administration,

U.S. Department of Labor.

[FR Doc. 2021-24498 Filed: 11/8/2021 8:45 am; Publication Date: 11/9/2021]